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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LOUIS A. SCHICK, KIMBERLEY M. MANGINO, GREGORY JAMES HAMPSON, PAUL EDWARD CUDDIHY, GREGORY JOHN FERA, RICHARD GERALD BLILEY, LUIS IVAN GOMEZ MENESES, MICHAEL JAMES PIERRO, JAMES E. SCHLABACH, and WILLIAM ROY SCHNEIDER

Appeal 2009-001419
Application 09/736,495
Technology Center 3600

Decided:[1] June 25, 2009

Before HUBERT C. LORIN, ANTON W. FETTING, and JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Louis A. Schick, et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-11, 15-31, and 37-47. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM-IN-PART. [2]

THE INVENTION

The invention is a method for managing remote mobile assets, such as trucks. Real-time data is collected from the assets, analyzed by computer for failure detection and prediction. (Spec. 2:31 – 3:2). Then maintenance activities are planned, including optimal time and location for the work. (Spec. 3:1-4).

Claim 1, reproduced below, are illustrative of the subject matter on appeal.

> 1. A computerized method for managing a plurality of mobile assets using information indicative of actual usage of each asset, the method comprising:
>
> collecting data regarding each of a plurality of mobile assets;
>
> providing a set of rules comprising relationships for processing the collected data to determine a plurality of operational modes for each

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[2] Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed Sep. 14, 2007) and Reply Brief ("Reply Br.," filed Jan. 24, 2008), and the Examiner's Answer ("Ans.," mailed Dec. 13, 2007).

asset, each of said operational modes being associated with a distinct level of wear in an asset;

processing the data relative to the set of rules to develop historical information regarding actual usage of each mobile asset, the information for said actual usage being arranged so as to list a plurality of operational modes accumulated for the asset over a selectable period of time; and

distributing the information via a global information network.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Chou	US 6,330,499 B1	Dec. 11, 2001

The following rejections are before us for review:

1. Claims 1-6, 10, and 20-30 are rejected under 35 U.S.C. § 102(e) as being anticipated by Chou.
2. Claims 7-9, 11, 15-19, and 31-47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Chou.

ARGUMENTS

Claims 1, 3-6, and 10

The Appellants argue that the fault data of Chou does not read on the operational modes associated with a distinct level of wear recited in claim 1 and therefore, Chou fails to anticipate the steps of claim 1. (App. Br. 11-12). Specifically, the Appellants argue that the fault data in the data repository 203 of Chou has "nothing to do" with historical information regarding actual

usage of each mobile asset, where the information for the actual usage is arranged to list a plurality of operational modes accumulated for the asset over a selectable period of time. (App. Br. 11). Further, the Appellants traverse the Examiner's assertion that fault monitoring inherently and necessarily monitors wear. (Reply. Br. 1-2). The Appellants also argue that dependent claims 3-6 and 10 are not anticipated for the same reasons. (App. Br. 12).

The Examiner continues to assert that the vehicle faults of Chou are the claimed operational modes and level of wear. (Ans. 6). The Examiner states, '[f]ault monitoring, inherently and necessarily, monitors "wear"' and '[a]ny part with a fault is shown to have "wear."' *Id.*

Claim 2

The Appellants argue that the portion of Chou cited by the Examiner fails to describe enhancing the historical data with environmental data, which includes at least one environmental parameter as recited in claim 2. (App. Br. 12).

The Examiner contends that environmental data is a broad term and could encompass the "case-based" reasoning of Chou. (Ans. 7).

Claims 20-25

The Appellants argue independent claims 20-25 separately; however, the argument for each of these independent claims is the same. Like for claim 1 above, the Appellants argue that the fault data of Chou does not read on the claimed operational modes associated with wear and therefore, Chou fails to anticipate the steps of these claims. (App. Br. 13-19). Further, the

Appellants traverse the Examiner's assertion that fault monitoring inherently and necessarily monitors wear. (Reply. Br. 1-2).

The Examiner asserts that the fault data of Chou is historical data and that the heath report of Chou is historical data based on use. (Ans. 7). The Examiner also responses that 'the "operational modes" are associated with a distinct level of wear (bad or good).' (Ans. 7).

Claims 26-29

The Appellants argue the Chou's data repository 203 merely is used for storing fault data and has "virtually nothing to do" with arranging actual usage of the assets in a plurality of operational modes, which indicate a respective state of health of the asset or with establishing a cost/benefit evaluation of the mobile asset. (App. Br. 20). The Appellants also argue that dependent claims 27-29 are not anticipated for the same reasons. (App. Br. 20).

The Examiner responds that Chou monitors faults during the history of the device, which would be indicative of a respective state of health. (Ans. 8). The Examiner further asserts Chou would inherently establish a cost-benefit evaluation for a proposed future plan since on the Chou's describes warning the drive to "stop now" in column 4, lines 50-53. (Ans. 4). The Examiner reasons that this denotes that to keep driving would cost more as the repair would be more extensive.

Claim 30

The Appellant argues the Chou's data repository 203 merely is used for storing fault data and has "virtually nothing to do" with arranging actual usage of the assets in a plurality of operational modes, which indicate a

respective state of health of the asset or with determining the remaining warrant coverage as recited in claim 26. (App. Br. 21).

The Examiner responds that though Chou discloses something different than the example in the Specification, neither the Specification nor the claims are limited to those examples. (Ans. 8). The Examiner cites column 5, lines 36 of Chou for a description of warranty information. *Id.*

Claims 7-9, 11, and 37

The Appellants argue that Chou fails to render claims 7, 9, 11, and 37, which depend from claim 1, unpatentable for the same reasons as argued for claim 1. (App. Br. 22).

Claims 15 and 38

The Appellants argue that Chou does not contain any description or suggestion that meets any of the structural and operational relationship in claim 15. (App. Br. 23). The Appellants further argue that Chou's fault data has nothing to do with the actual usage information and the step of posting to the operator reminder information recited in claim 15; therefore, Chou fails to render claim 15 unpatentable. *Id.* The Appellants argue that dependent claim 38 is patentable for the same reasons. *Id.*

The Examiner does not specifically respond to the Appellants' arguments for claims 15.

Claims 16-19 and 39

The Appellants argue that Chou does not contain any description or suggestion that meets any of the structural and operational relationship in claim 16. (App. Br. 24). Further, the Appellants argue that Chou's fault data has nothing to do with operator data and the step of posting to the operator

reminder information as recited in claim 16. *Id.* The Appellants also argue that dependent claim 38 is patentable for the same reasons. *Id.*

The Examiner does not specifically respond to the Appellants arguments' for claims 16.

Claims 40-47

The Appellants argue that Chou fails to render dependent claims 40-47, which depend from claims 20-26 and 30, unpatentable for the same reasons as argued for the independent claims. (App. Br. 25).

ISSUES

The issues are:

1. Does Chou describe a method including the step of processing data to develop historical information regarding actual usage of each mobile asset, said actual usage being arranged in a plurality of operational modes of the asset, that are each associated with a distinct level of wear in the asset as required by claims 1, 20, and 21?
2. Does Chou describe a system including a processor that is configured for processing data relative to a set of rules that determine a plurality of operational modes develop historical information regarding actual usage of each mobile asset, said actual usage being arranged in a plurality of operational modes of the asset, each of said operational modes that are each associated with a distinct level of wear in the asset as required by claims 22-25?

3. Does Chou inherently disclose a method including the step of establishing a cost/benefit evaluation of the mobile asset for a proposed future plan of use in light of the state of health of the mobile asset as recited in claim 26?
4. Does Chou describes a method including the step of determining the remaining warranty coverage of each respective mobile asset based on the actual usage of the asset as recited in claim 30?
5. Would one of ordinary skill in the art be led by Chou to the method recited in claim 15?
6. Would one of ordinary skill in the art be led by Chou to the method recited in claim 16?

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

Claim construction

1. Claim 1 recites a method including:

> providing a set of rules comprising relationships for processing the collected data to determine a plurality of operational modes for each asset, each of said operational modes being associated with a distinct level of wear in an asset;

2. Claim 15 recites a method including:

> Collecting data regarding each of a plurality of mobile assets;
>
> processing the data to develop historical information regarding actual usage of each mobile asset; and
>
> posting to an operator of a respective mobile asset, based on said collected data, reminder information to ensure compliance of any applicable regulator requirements.

3. Claim 16 recites a method including:

> collecting operator data regarding the operating of each one of a plurality of mobile assets by a respective operator;
>
> processing the data to develop historical information regarding the operation of the mobile asset by the respective operator; and
>
> posting to said operator, based on said collected data, reminder information to ensure compliance of any applicable regulatory requirements.

4. Claim 20 recites a method including:

> providing a set of rules comprising relationships for processing the collected data to determine a plurality of operational modes for each asset, each of said operational modes being associated with a distinct level of wear in an asset;

5. Claim 21 recites a method including:

> providing a set of rules comprising relationships for processing the collected data to determine a plurality of operational modes for each asset, each of said operational modes being associated with a distinct level of wear in an asset;

6. Claim 22 recites a system including:

> a memory device for storing a set of rules comprising relationships for processing the collected data to determine a plurality of operational modes for each asset, each of said operational modes being associated with a distinct level or wear in an asset:
>
> a processor configured to process the collected data relative to the set of rules to develop historical information regarding actual usage of each mobile asset, the information for said actual usage being arranged so as to list a plurality of operational modes accumulated for the asset over a selectable period of time.

7. Claims 23 recites a system including:

> a memory device carried on vehicle for storing a set of rules comprising relationships for processing the collected data to determine a plurality of operational modes for each asset, each of said operational modes being associated with a distinct level or wear in an asset:
>
> a processor carried on the vehicle for processing said generated data relative to the set of rules to develop information indicative of the operation of the vehicle for its useful life.

8. Claim 24 recites a system including:

> a memory device at the data center for storing a set of rules comprising relationships for processing data received at the data center to determine a plurality of operational modes for each asset, each of said operational modes being associated with a distinct level or wear in an asset:
>
> a processor at the data center for processing the received data relative to the set of rules to develop information indicative of the operation of the vehicle over the useful life of the vehicle.

9. Claim 25 recites a system including:

> a first processor configured to process the operational data relative to a set of rules comprising relationships for processing the operational data to determine a plurality of operational data to determine a plurality of operational modes for said vehicle, wherein each of said operational modes is associated with a distinct level of wear in a vehicle in order to develop individual historical information regarding actual usage of each vehicle, the information for said actual usage being arranged so as to list the plurality of operational modes of the vehicle.

10. Claim 26 recites a method including:

> processing the data to develop historical information regarding actual usage of each mobile asset, said actual usage being arranged in a plurality of operational modes of the asset, each of said operational modes being indicative of a respective state of health of said asset:

> establishing a cost/benefit evaluation of the mobile asset for a proposed future plan of use in light of the state of health of the mobile asset.

11. Claim 30 recites a method including:

> processing the data to develop historical information regarding actual usage of each mobile asset, said actual usage being arranged in a plurality of operational modes of the asset;
>
> determining the remaining warranty coverage of each respective mobile asset based on the actual usage of the asset.

12. The Specification does not provide a definition for "operational mode."

13. The definition of "operational" is "of or relating to operation or to an operation <the ~ gap between planning and production>." (*See Merriam-Webster's Collegiate Dictionary* 815 (10th Ed. 1998.)(First entry for "operational.")

14. The definition of "operation" is "a method or manner of functioning < a machine of very simple ~>." (*See Merriam-Webster's Collegiate Dictionary* 815 (10th Ed. 1998.)(Second entry for "operation.")

15. The definition of "mode" is "a particular functioning arrangement or condition: STATUS <a space craft in reentry ~><a computer operating in parallel ~>." (*See Merriam-Webster's Collegiate Dictionary* 747 (10th Ed. 1998.)(Fourth entry for "mode.")

16. The Specification does not provide a definition for "wear."

17. The definition of "wear" is "the result of wearing or use : diminution or impairment due to use <*wear*-resistant surface>." (*See Merriam-Webster's Collegiate Dictionary* 1338 (10th Ed. 1998.)(Fourth entry for "wear.")

18. The definition of "wearing" is "a: to cause to deteriorate by use b: to impair or diminish by use or attrition: consume or waste gradually <letters on stone *worn* away by weathering" or "to produce gradually by friction or attrition <~ a hole in the rug>". (*See Merriam-Webster's Collegiate Dictionary* 1338 (10th Ed. 1998.)(Fourth entry for "wearing.")

The scope and content of the prior art

19. Chou describes a vehicle monitoring system and method for vehicle diagnostics and health monitoring. (Col. 1, ll. 7-9).

20. Chou describes an in-vehicle client computer device 101 installed in the vehicle with a communications link 150. (Col. 2, ll. 30-36).

21. Chou describes a remote service center 200 with a diagnostic server 201 and a data repository 203. (Col. 2, ll. 47-50).

22. Chou describes the in-vehicle client computer device 101 having components that monitors the vehicle for vehicle fault codes and that accept request for vehicle parametric data and retrieves the data. (Col. 4, ll. 7-38).

23. Chou describes the in-vehicle client 100 sending vehicle fault codes and vehicle information to the service center 200. (Col. 4, ll. 46-45).

24. Chou describes the client device speaking recommended actions to the driver, such as "stop now," based on the fault code. (Col. 4, ll. 50-53).

25. Chou describes that the diagnostic client determines the severity of the faults by looking in the predefined fault code/severity/recommendation table. (Col. 8, ll. 8-10).

26. Chou describes the service center 200 comprising a diagnostic server 201 that has access to data related to the vehicle such as built, history, diagnostics, warranty, service information and failure mode data and that is linked to data repository 203. (Col. 4, ll. 34-39).

27. Chou describes the diagnostic server 201 including a diagnosis engine 201A that provides a health checkup or a diagnosis using data obtained from the vehicle, the vehicle's past history, and the diagnostics information about the particular model of the vehicle. (Col. 4, ll. 53-58).

28. Chou describe the diagnostic engine performing trend analysis based on present and historical vehicle parameters collected from the vehicle to provide early guidance for preventive maintenance, such as "change oil in 1500 miles." (Col. 8, ll. 12-21).

29. Chou describes a vehicle fault which indicates that the air bags have been deployed. (Col. 7, ll. 22-26).

Any differences between the claimed subject matter and the prior art

30. Chou does not describe operational modes associated with a distinct wear level.

31. Chou does not describe establishing a cost/benefit evaluation of the mobile asset for a proposed future plan of use in light of the state of health of the mobile asset.

32. Chou does not describe determining the remaining warranty coverage of each respective mobile asset based on the actual usage of the asset.

The level of skill in the art

33. Neither the Examiner nor the Appellants have addressed the level of ordinary skill in the pertinent art of managing a fleet of remote assets. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau,* 261 F.3d 1350, 1355 (Fed. Cir. 2001) ("[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error 'where the prior art itself reflects an appropriate level and a need for testimony is not shown'") (Quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985)).

34. The Examiner asserts that one of ordinary skill in the art would have found it obvious to use the system and method of Chou to ensure compliance with regulatory requirements. (Ans. 5).

Secondary considerations

35. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

Claim Construction

During examination of a patent application, a pending claim is given the broadest reasonable construction consistent with the specification and should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

> [W]e look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation. As this court has discussed, this methodology produces claims with only justifiable breadth. *In re Yamamoto*, 740 F.2d 1569, 1571 (Fed. Cir. 1984). Further, as applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee. *Am. Acad.*, 367 F.3d at 1364.

In re ICON Health and Fitness, Inc., 496 F.3d 1374, 1379 (Fed. Cir. 2007). Limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003).

Anticipation

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Obviousness

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.") The Court in *Graham* further noted that evidence of secondary considerations "might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented." 383 U.S. at 17-18.

ANALYSIS

The rejection of claims 1-6, 10, and 20-30 under 35 U.S.C. § 102(e) as being anticipated by Chou.

Method Claims 1-6, 10, 20, and 21

> A determination that a claim is anticipated under 35 U.S.C. § 102(b) involves two analytical steps. First, the Board must interpret the claim language, where necessary. Because the PTO is entitled to give claims their broadest reasonable

> interpretation, our review of the Board's claim construction is limited to determining whether it was reasonable. *In re Morris*, 127 F.3d 1048, 1055 (Fed. Cir. 1997). Secondly, the Board must compare the construed claim to a prior art reference and make factual findings that "each and every limitation is found either expressly or inherently in [that] single prior art reference." *Celeritas Techs. Ltd. v. Rockwell Int'l Corp.*, 150 F.3d 1354, 1360 (Fed. Cir. 1998).

In re Crish, 393 F.3d 1253, 1256 (Fed. Cir. 2004) (Footnote omitted).

Independent claims 1, 20 and 21 all recite methods which include the step of providing a set of rules comprising relationships for processing data to determine a plurality of operational modes for each asset, where each of the operational modes are associated with a distinct level of wear in the asset. (FF 1, 4, and 5). First, the Specification does not provide an express definition of "operational mode." (FF 12). Accordingly, we will give it its ordinary and customary meaning, which we find is a particular arrangement that is related to a method or manner of functioning. (FF 13-15). This meaning is consistent with the description of invention set forth in the Specification. Second, the Specification does not provide an express definition of "wear." (FF 16). Accordingly, we will also give it its ordinary and customary meaning, which we find is the result of gradual deterioration by use. (FF 17-18). This meaning is also consistent with the description of invention set forth in the Specification.

The Examiner contents that the vehicle faults described in Chou are operational modes. (Ans. 6). We agree. The vehicle faults are operational modes, as the term is construed above. A vehicle fault is a particular

arrangement of a vehicle that is related to the manner in which the vehicle functions.

However, we do not agree with the Examiner's assertion that the '[f]ault monitoring, inherently and necessarily monitors "wear"' and that '[a]ny part with a fault is shown to have "wear."' (Ans. 6). Under principles of inherency, when a reference is silent about an asserted inherent characteristic, it must be clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268 (Fed. Cir. 1991). Claims 1, 20 and 21 all recite that *each* of the operational modes are associated with a distinct level of wear in an asset. Chou describes a vehicle fault indicating, for example, that the air bags have been deployed. (FF 29). This vehicle fault is not inherently associated with a distinct level of wear, as construed above. Air bags are not designed to deploy as a result of gradual deterioration by use, but instead are designed to deploy upon sudden impact. Therefore, we find that each and every limitation of claims 1, 20 and 21 is not found either expressly or inherently in Chou.

Accordingly, we find that the Appellants have shown that the Examiner erred in rejecting independent claims 1, 20, and 21 and claims 2-6 and 10 dependent thereon, as anticipated by Chou.

System Claims 22-25

Independent claims 22-24 all recite system which include a memory device and a processor. (FF 6-8). The memory device is structure to store a set of rules comprising relationships for processing data to determine

operational modes for each asset, where each operational mode is associated with a distinct level of wear. *Id.* The processor is structured to process data relative to the rules to develop historical information that is arranged so as to list a plurality of operational modes. *Id.* Claims 25 also recites a processor that is structured to process data relative to rules that determine a plurality of operational modes, which are each associated with a distinct level of wear in a vehicle. (FF 9).

Like above, we find that the vehicle faults of Chou are operational modes, but are not operational modes associated with a distinct level of wear in an asset. Therefore, we find that Chou does not describe a processor structured to process data relative to a set of rules that comprise relationships to determine a plurality of operation modes, which are associated with a distinct level of wear. Each and every limitation of claims 22-25 is not found either expressly or inherently in Chou.

Accordingly, we find that the Appellants have shown that the Examiner erred in rejecting independent claims 22-25 as anticipated by Chou.

Method Claim 26-29

The Appellants argue claims 26-29 as a group (App. Br. 19-20). We select claim 26 as the representative claim for this group, and the remaining claims 27-29 stand or fall with claim 26. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

We find that Chou does not inherently describe the step of establishing a cost/benefit evaluation of the mobile asset for a proposed future plan of use in light of the state of health of the mobile asset as recited

in claim 26 (FF 10). (FF 31). The Examiner cites Chou's description of recommended driver actions, such as "stop now," to reason that Chou's system must inherently perform the step of establishing a cost/benefit evaluation. (Ans. 4). However, we find that Chou describes the diagnostic client using a predefined fault code/severity/recommendation table to determine the recommended action displayed to the drive. (FF 25). Each and every limitation of claim 26 is not found either expressly or inherently in Chou.

Accordingly, we find that the Appellants have shown that the Examiner erred in rejecting independent claim 26, and claims 27-29 dependent thereon, as anticipated by Chou.

Method Claim 30

We find that while Chou describes that the diagnostic server has access to the data related to a warranty (FF 26), Chou does not describe the step of determining the remaining warranty coverage of each respective mobile based on the actual usage of the asset as recited in claim 30 (FF 11). (FF 32). It is well settled that in order for the examiner to establish a *prima facie* case of anticipation, each and every element of the claimed invention, arranged as required by the claim, must be found in a single prior art reference, either expressly or under the principles of inherency. *See generally*, *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997); *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677-78 (Fed. Cir. 1988); *Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick,* 730 F.2d 1452, 1458 (Fed. Cir. 1984). Each and every limitation of claim 30 is not found either expressly or inherently in Chou.

Accordingly, we find that the Appellants have shown that the Examiner erred in rejecting independent claim 30 as anticipated by Chou.

The rejection of claims 7-9, 11, 15-19, and 31-47 under § 103(a) as being unpatentable over Chou.

Claims 7-9, 11, and 37

These rejections are directed to claims dependent on claim 1, whose rejection we have reversed above. For the same reasons, we will not sustain the rejections of claims 7-9, 11, 31, and 37 over the cited prior art.

Claims 15 and 38

The Appellants argue claims 15 and 38 as a group. (App. Br. 23). We select claim 15 as the representative claim for this group, and the remaining claim 38 stands or falls with claim 15. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

First, we note that the Examiner asserted that it would have been obvious to one having ordinary skill in the art to use the system and method of Chou to ensure compliance with regulatory requirement. (Ans. 5). The Appellants do not traverse this assertion but instead argue that there is no description in Chou that meets each of the structural and operational limitations in claim 15. (App. Br. 23).

We find that Chou describes most of the steps recited in claim 15. Chou describes the diagnostic server 201 performing trend analysis on based on present and historical vehicle parameters to provide early guidance for preventive maintenance. (FF 28). This description reads on the claimed steps of collecting data and processing the data recited in claim 15 (FF 2). Chou also describes the diagnostic server using the trend analysis to provide

early guidance for maintenance to the driver, such as "change oil in 1500 miles." (FF 28). We find that the early guidance provided to the driver reads on the step of posting to an operator reminder information (FF 2). As the Appellants have not traversed the Examiner's assertion, we find that one of ordinary skill in the art would have been led by Chou to the method of claim 15.

Accordingly, we find that the Appellants have not shown that the Examiner erred in rejecting independent claim 15 and claim 38, dependent thereon, as unpatentable over Chou.

Claims 16-19 and 39

The Appellants argue claims 16-19 and 39 as a group. (App. Br. 23). We select claim 15 as the representative claim for this group, and the remaining claim 38 stands or falls with claim 15. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

Again, we note that the Examiner asserted that it would have been obvious to one having ordinary skill in the art to use the system and method of Chou to ensure compliance with regulatory requirement. (Ans. 5). The Appellants do not traverse this assertion but instead argue that there is no description in Chou that meets each of the structural and operational limitations in claim 16. (App. Br. 23).

As we did above with regards to claim 15, we find that Chou describes the steps of claim 16. Further, we find that the present and historical vehicle parameter data of Chou reads on the claimed operator data (FF 3) when the vehicle is driven by one operator. As the Appellants have

not traversed the Examiner's assertion, we find that one of ordinary skill in the art would have been led by Chou to the method of claim 16.

Accordingly, we find that the Appellants have not shown that the Examiner erred in rejecting independent claim 16 and claims 17-19 and 39, dependent thereon, as unpatentable over Chou.

Claims 31 and 40-47

These rejections are directed to claims dependent on claims 20-26 and 30, whose rejection we have reversed above. For the same reasons, we will not sustain the rejections of claims 31 and 40-47 over the cited prior art.

CONCLUSIONS OF LAW

We conclude that the Appellants have shown that the Examiner erred in rejecting claims 1-11, 20-31, 37, and 40-47 under 35 U.S.C. § 102(e) as anticipated by Chou.

We conclude that the Appellants have not shown that the Examiner erred in rejecting claims 15-19, 38, and 39 under 35 U.S.C. § 103(a) as unpatentable over Chou.

DECISION

The decision of the Examiner to reject claims 1-11, 20-31, 37, and 40-47 is reversed and to reject claims 15-19, 38, and 39 is affirmed.

AFFIRMED-IN-PART

JRG

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